CONSEQUENCES OF ILLEGAL OR ULTRA VIRES ACQUISITION OF REAL ESTATE BY A CORPORATION.

QUITE a number of cases have arisen in the Courts, in which it has been attempted to question the title of corporations to real estate on the ground of a lack of capacity in the corporation to take and hold the lands in question. In applying to the decision of these cases the rule that the corporate title is not subject to such attack, inasmuch as the question whether the corporation in purchasing has violated a limiting or prohibitory statute, or has exceeded its charter powers, concerns the State alone, the Courts have often added the dictum that lands thus acquired are necessarily subject to escheat by the State. The corporation may take, it is said, and may hold against all but the State, and against the State until divested by a proceeding instituted for that purpose. By a bit of "mediæval reasoning," the case of the corporation is likened to that of the alien, who, at common law, was permitted to take and to hold against all but the sovereign; but, perhaps as Blackstone puts it, on account of his "presumption" in attempting by an act of his own to acquire real property, he was liable at any time to be ousted by the sovereign through the procedure known as an inquest of office. Some text-book writers, relying on this dictum, have assumed it to be the law, and have stated it accordingly.[1]

---

[1] Professor Tiedman says that when the amount of property which a corporation may hold is limited, "the State may confiscate whatever lands it acquires above the statutory limit." 5 Amer. and Eng. En. of Law, 431.

Mr. Taylor, speaking of a deed of real estate to a corporation rendered incompetent by its charter or enabling act to hold the real estate conveyed, remarks that "all purposes of public policy are amply subserved by holding the deed voidable at the suit of the government." Taylor on Private Corporations, 303.

Mr. Beach states the law thus: "The Commonwealth alone can object to the legal capacity of a corporation to hold real estate. There must be a direct proceeding by the State for the purpose of vacating the deed." 2 Beach on Corporations, sect. 378.

The author of a recent work on corporations states that when a corporation takes a deed in violation of the local law, the "title is good against all but the State." He refers to this principle as simply a development of the common-law rule applicable to an alien's purchase of real estate. He also says that when a purchase of real estate is made by a foreign corporation, in violation of a local statute, the title will upon proper

The view expressed, either directly or inferentially, in the authorities in question, that corporate realty unlawfully acquired may be seized by the State, was apparently adopted largely in reliance upon some old Pennsylvania cases, which are invariably cited in its support. Upon their examination, however, it appears that they are based on conditions peculiar to Pennsylvania, and not generally existing elsewhere.

The decision in the first of these cases, made in 1821,[1] is placed squarely on the English Mortmain Statutes, under which a corporation might take and hold against all but the mesne lords and the king. A deed to the Bank of North America was collaterally attacked, on the ground that it was taken for a purpose not authorized by the charter of the bank. The Court thought that the title of the corporation was similar to the title of an alien, in that it was good against all but the State; and held that the mortmain laws of England were in force in Pennsylvania to the extent, in the case of a conveyance to a corporation not authorized by its charter or by an Act of the Assembly, of permitting the State as

quo warranto proceedings revert to the State. Murfree on Foreign Corporations, sects. 353, 358.

The Massachusetts Court say: "The corporation by its purchase acquired a title to the land, which was good against all the world, except possibly the Commonwealth." Davis *v.* Old Colony R. R., 131 Mass. 258.

The Supreme Court of the United States say: "Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable, and the sovereign alone can object; . . . so an alien forbidden by the local law to acquire real estate, may take and hold title until office found." Bank *v.* Whitney, 103 U. S. 99; Bank *v.* Matthews, 98 U. S. 621.

The Alabama Court say: "The sovereign alone has the right to impeach the transaction, and until it supervenes for this purpose, the corporation is vested with perfect title against all the world, defeasible only upon office found." Long *v.* Georgia Pacific R. R., 91 Ala. 519.

In North Carolina, the Court hold that a conveyance of land to a railroad corporation, for a purpose other than that authorized by its charter, is, in analogy to a conveyance to an alien at the common law, "valid until assailed in a direct proceeding instituted by the sovereign for that purpose." Mallett *v.* Simpson, 94 N. C. 37.

The Georgia Court say that "foreign corporations seem to have been treated as aliens were in England as to purchasing and holding real estate," and that "the doctrine is thoroughly established in our American States that the right of foreign corporations to purchase or hold lands in excess of the authority conferred, either by their own charter, or by the laws of the State in which such purchase is made, can only be questioned by the State itself in which such land may be situated." American Mortgage Co. *v.* Ternille, Ga. (1891).

See also De Camp *v.* Dobbins, 29 N. J. Eq. 36; Edwards *v.* Fairbanks, 27 La. 449.

In all these cases the statement as to an escheat or forfeiture is mere *obiter*, the question not having been presented or decided.

[1] Leasure *v.* Hillegas, 7 S. & R. 313.

the sovereign lord, there being no mesne lords, to enter and claim the forfeiture, and that until the State did so, the title of the corporation was good, and it could convey such title to its grantee.

In consequence, probably, of this decision, the Pennsylvania Legislature passed an Act, in 1833, to effectuate the law thus declared as to escheat. It provided that lands purchased by a corporation, not authorized thereto by an act of the Legislature, should be subject to forfeiture to the Commonwealth, but that the corporation, its feoffer or feoffers, might hold the same, subject to be divested or dispossessed at any time by the Commonwealth; and prescribed the procedure by which the land should be escheated.

The oft-cited case of Runyan *v.* Coster[1] followed, in 1840, the same point being decided as in Leasure *v.* Hillegas. The case was a Pennsylvania case, which went up from the Circuit Court and the opinion was in accordance with the doctrine of Leasure *v.* Hillegas, and the Statute of 1833. Goundie *v.* Northampton Water Co.,[2] decided in 1847, is to the same effect, and follows the statute referred to.

The only reason why the mortmain laws were considered in force in Pennsylvania was because the charter to Penn was understood as embracing and adopting them. In every other State in the Union in which the question has arisen, it has been judicially held that, founded on the customs of a remote past not applicable to our situation and repugnant to the genius and temper of our laws, they are not in force.[3] They had their origin in feudal reasons and were purely local and English. The ecclesiastical corporations of that country held their powers without written grant, with no precise limitations, and with no limit as to the duration of their existence. At the conclusion of the twelfth century, they enjoyed, in respect of territorial property, nearly one-half of England.[4] The lands thus holden were free from taxes, and, to some extent, from military service; they were also free from such feudal incidents as reliefs, fines, escheats, forfeitures and wardships. The national strength was palsied by the diminution of military nobles; and the feudal superiors were largely deprived of

[1] 14 Peters, 122.

[2] 7 Penn. 233.

[3] 2 Kent's Com. 282; Potter *v.* Thornton, 7 R. I. 252; Odell *v.* Odell, 10 Allen, 1; Perin *v.* Carey, 24 How. (N. Y.) 465; Page *v.* Heineberg, 40 Vt. 81; Lathrop *v.* Commercial Bank, 8 Dana (Ky.), 114; Rivanna Co. *v.* Dawsons, 3 Gratt. (Va.) 19; Chambers *v.* St. Louis, 29 Mo. 543; Dodge *v.* Williams (Wis.), N. W. Rep.

[4] Hallam's Middle Ages, i. 506.

their revenues. It was to remedy all this that alienations in mortmain were prohibited. In this country, corporate realty is subject to the same public burdens as that held by individuals; it may be conveyed voluntarily by the corporation, or taken by force of law for its debts or for public purposes; corporate powers are clearly defined; the period of corporate existence is usually limited; and in all cases, at the present day, the right to repeal, alter, or amend a charter is reserved. In addition to this, we have a territory, vast areas of which are still unoccupied and unimproved.[1] In this country and in this age, it is unreasonable to resort to the mortmain statutes to draw an analogy or to establish the law.

The analogy between the case of the corporation and that of the alien, on which some of the authorities cited rest, seems equally unwarranted. "The escheat of estates to the sovereign," as Judge Redfield puts it,[2] "in consequence of a conveyance to an alien, is a result of purely feudal character. It was so held, because an alien owing a foreign allegiance was regarded as incapable of performing the feudal military services to the king, as lord paramount of all the land in the realm. Hence, the conveyance having carried the title out of the former proprietor, and the grantee being incapable of taking the estate, it was held to vest in the king, absolutely, at the death of the first grantee, as an alien could have no heirs to be invested with his bare possession, which was all the estate which ever existed in him, and which was always liable to be divested at any moment upon office found. None of these reasons exist in this country. The right to interfere with aliens holding real estate in this country goes upon the basis of some defect in allegiance, and allegiance is a matter pertaining altogether to the national sovereignty." A corporation of one State does not occupy in another State the position of an alien.

In the absence of a specific statute, like the Pennsylvania Statute of 1833, it seems very clear that lands acquired and held by a corporation, under the conditions set forth, are not subject to escheat by the State. This conclusion is supported by a late Pennsylvania case. The constitution of that State provides that no corporation doing the business of a common carrier, shall hold or acquire lands, except such as shall be necessary for carrying on its business, but affixes no penalty for a violation. It was accord-

[1] The unoccupied territory of the State of Texas alone exceeds in area Great Britain.

[2] State *v.* Railroad Co., 25 Vt. 433.

ingly said, that the Commonwealth may have a remedy, by a proceeding to forfeit the charter of a corporation acquiring or holding lands in violation of this section, but it cannot escheat the lands.[1]

In the absence of such a statute, then, what are the consequences of an illegal or *ultra vires* purchase of real estate by a corporation?

The subject may be considered under three heads.

First. When a corporation, authorized by the law of its creation, for some purposes or to a limited extent, to purchase and hold real estate, takes a deed for other purposes, or beyond the limit allowed.

In such a case, in the absence of any statute to the contrary, it is settled that the deed divests the title of the grantor, and vests it indefeasibly in the corporation. The deed cannot be vacated, but the State chartering the corporation may forfeit its charter for such misuse of its powers. The State alone is concerned, and the State alone can act. In the case of a foreign corporation, the Courts of the State wherein the land in question is situated will take the same view as in the case of a domestic corporation,

---

[1] Com. *v.* R. R. Co., 132 Penn. 591, 596, 605. And now the New York Court of Appeals, in an opinion published after the preparation of this article, holds that the right of the State to object to the holding of land by a foreign corporation does not, without statutory authority, include the right to escheat the land. In this case the defendant, a New Jersey corporation, purchased a lot of land in New York City, and took a deed of the same. Subsequently, the plaintiff and the defendant entered into a written contract whereby they agreed to exchange said lot of land for another lot of land owned by the plaintiff. Pursuant to said contract the defendant executed a deed in due form, by which it assumed to convey the premises to the plaintiff. It was contended that it is contrary to the policy of the State of New York to permit a foreign corporation, chartered to deal in lands, to hold or convey lands in the State. On agreed facts the following question was submitted to the General Term: whether the defendant possessed, and has conveyed to the plaintiff a good and sufficient title to the premises described in said contract and deed. The General Term adjudged that the defendant's deed did not convey to the plaintiff a good title, and that its title was "subject to the right, title, and interest of the people of the State, whose title was, at the time of the execution and delivery of the deed, superior and prior to that of the defendant." On appeal, the Court held that the defendant was not prohibited by any policy of the State from holding or conveying the land in question, and that, if it were otherwise, the right of interference by the State would not extend to any forfeiture of the property held by the corporation. Lancaster *v.* Amsterdam Improvement Co., 140 N. Y. 576. See also Walsh *v.* Barton, 24 Ohio St. 28. In Minnesota, corporate real estate acquired, held or owned in violation of certain statutory restrictions, is subject to forfeiture to the State, and it is made the duty of the attorney-general to enforce every such forfeiture by due process of law. 2 General Statutes of Minnesota, p. 770. A similar law as to real estate in the Territories may be found in U. S. St., March 3, 1887, ch. 340 (24 St. 476).

regarding the impending danger of a judgment of dissolution as a sufficient check, provided the holding of the land is not contrary to its statutes, or to the policy of its legislation.[1] In case of the dissolution of a business corporation, its real estate is applied to the use of its creditors and stockholders, the old common-law doctrine that it reverts to the grantor being now regarded as "an obsolete wrong."[2]

The rule that an unlawful purchase of land, of the nature stated, concerns the State alone, does not rest on any analogy drawn from the mortmain statutes, or from the case of the alien. It springs from the necessities of modern conditions, and is based on equitable reasons. It would not only create great inconveniences and embarrassments, if corporate titles could in such cases be collaterally impeached, but it would be against justice, and would accomplish a legal wrong, to permit the grantor, and those claiming under him, to raise the question; and as to others, it may be said that the restriction is a matter of governmental policy, which does not concern individuals as such. The wrong done in violating the law is against the State alone; and with the State alone, therefore, should rest the right to elect whether it will assent, or by proper and equitable proceedings interfere and prevent the wrong. "A private person cannot directly or indirectly usurp the functions of the government."[3]

The rule appears to have been first announced in 1820, by Chancellor Kent.[4] It was applied, in 1825, in Virginia;[5] in 1848, in Tennessee;[6] and has since been sustained by a long line of cases.[7]

[1] Barnes *v.* Suddard, 117 Ill. 237; Gilbert *v.* Hole, So. Dakota (1891); Lancaster *v.* Improvement Co., 140 N. Y. 576.

[2] People *v.* O'Brien, 111 N. Y. 1; Havemeyer *v.* Superior Court, 84 Cal. 327. In the case of a public or charitable corporation, however, its real estate reverts upon its dissolution to the grantor or donor, unless some other course of devolution has been directed by positive law, but still subject, nevertheless, to the charitable use. Mormon Church *v.* United States, 136 U. S. 1, 47.

[3] Swayne, J., in Bank *v.* Matthews, 98 U. S. 628.

[4] Silver Lake Bank *v.* North, 4 Johns. Ch. 370.

[5] Banks *v.* Poitiaux, 3 Rand. 136.

[6] Barrow *v.* Turnpike Co., 9 Humph. 304.

[7] Natoma Water Co. *v.* Clarkin, 14 Cal. 544; Hayward *v.* Davidson, 41 Ind. 212; Land *v.* Coffman, 50 Mo. 243; Blunt *v.* Walker, 11 Wisc. 334; So. Pacific R. R. Co. *v.* Orton, 6 Saw. 157; Myers *v.* Croft, 13 Wall. 291; Railroad Co. *v.* Lewis, 53 Iowa, 101; Alexander *v.* Tolleston Club, 110 Ill. 65; De Camp *v.* Dobbins, 29 N. J. Eq. 36; Bank *v.* Matthews, 98 U. S. 621; Colwell *v.* Springs Co., 100 U. S. 55; Christian Union *v.* Yount, 101 U. S. 355; Bank *v.* Whitney, 103 U. S. 99; Mallet *v.* Simpson, 94 N. C. 37; Baker's case, 36 Minn. 185; Land Co. *v.* Bushnell, 11 Neb. 192; Davis *v.* Old Colony R. R., 131 Mass. 258, 273; Walsh *v.* Bouton, 24 Ohio St. 28. See *contra*, Occum *v.* Sprague Mfg. Co., 34 Conn. 529; Thweatt *v.* Bank, 81 Ky. 1.

On the same principle, it has been held, in the case of an *ultra vires* acquisition of shares of stock by a corporation, that the title of the stock vests in the corporation, and it has the power to sell and dispose of the same.[1]

Second. When a corporation takes a conveyance of land, without complying with statutory requirements made conditions precedent to the right so to do.

The rule here seems to be that unless the legislative intent is manifest, to make the conveyance void for lack of such compliance, it is good. The rule is well illustrated by a recent decision of the United States Supreme Court.[2] In this case, the Court dealt with a statute providing that no corporation, foreign or domestic, should purchase or hold real estate in Colorado, except as therein provided, and imposing, as a penalty upon officers and stockholders, personal liability for the corporate debts. A foreign corporation took a conveyance of land without complying with the requirements of this statute, and its title was questioned in an action of ejectment, by a party claiming under its grantor. The Court, while holding the fair implication to be that the penalty specified was the only result intended by the Legislature to follow a violation of the law, observed that the law does not declare void as to all persons, and for every purpose, a conveyance of real estate to a foreign corporation, which has not previously done what is required, before it can rightfully carry on business in the State, nor that the title to such property shall remain in the grantor, despite his conveyance. If the Legislature had so intended, that intention would have been clearly manifested. The doctrine was also invoked that the State alone can interfere in such a case. The Court, therefore, decided that the deed vested a good title in the corporation. It would seem that the decision might also have been based on the principle that a grantor making title to a corporation is estopped from questioning the effect of his own conveyance.

The same question was passed upon by the Supreme Court of Georgia. It arose under a statute which provides that the State of Georgia will not consent to foreign corporations owning more than 5000 acres of land in that State. The Court held that the State alone could question the right of a corporation to hold land

---

[1] H. & G. M. Co. *v.* H. & W. M. Co., 127 N. Y. 252.

[2] Fritts *v.* Palmer, 132 U. S. 282.

beyond the limit specified without complying with the requirements of the statute.[1]

Third. When a corporation takes a conveyance of real estate which is directly prohibited by the statutes of the State wherein the land is situated, or contrary to the settled policy of such State.

A conveyance to a corporation in violation of a rule of policy, or of a "positive, peremptory, and forbidding statute," is illegal, as distinguished from a mere *ultra vires* purchase, or a purchase without complying with conditions made prerequisites to such action; but its validity, it is conceived, is ordinarily not to be determined by any different test. In all these cases alike, the fact exists that the conveyance is contrary to law; it is in violation of the expressed or implied will of the Legislature. The violation concerns the individual no more in one case than in the other, and the consequences should be the same; and where the conveyance is questioned by the grantor, or by those claiming under him, the doctrine of estoppel is equally applicable. Although the law does forbid the conveyance, if the fact exists that the conveyance has been made, notwithstanding the prohibition, it does not, by any means, follow as an invariable consequence, that the conveyance is utterly inoperative. The law may prohibit the doing of an act, and yet if it is done, the act may stand. For example, property conveyed pursuant to a contract made in consideration of the compounding of a crime, cannot be recovered back at law, nor the conveyance set aside in equity.[2] So, of a lease of a railroad, *ultra vires* of lessor and lessee, a bill by the lessor to set aside the lease will not be entertained, when the lessee has taken no steps to rescind or repudiate the contract.[3]

In such cases, the parties being equally at fault, the Courts decline to interfere, and the executed contracts of the parties stand. When a sale has been executed, the vendor cannot impeach his conveyance by showing its illegality, and thus change the title. This disability on his part avails the vendee as a sufficient title.[4] Therefore, even if a conveyance to a corporation is contrary to law, it does not necessarily follow that the property is to revert to the grantor, who has been fully paid for it, or to become the spoil of the first taker.

[1] American Mortgage Co. *v.* Tennille, Georgia (1891), 33 Amer. & En. Corp. Cases, 37.

[2] Atwood *v.* Fisk, 101 Mass. 363; Bryant *v.* Peck Co., 154 Mass. 460.

[3] St. Louis R. R. *v.* Terre Haute R. R., 145 U. S. 394.

[4] Ellis *v.* Hammond, 57 Ga. 179; Hill *v.* Freeman, 73 Ala. 200, 201; Meyers *v.* Meinrath, 101 Mass. 366; Horton *v.* Buffington, 105 Mass. 399.

But the transfer of the title to real estate is governed by the law of the State in which the land is situated. The right of corporations to hold real estate is wholly within the control of legislative action; it may be limited or absolutely prohibited; and the consequences of a violation of a limiting or prohibitory law may be legislatively fixed. Whether or not, then, a conveyance of real estate to a corporation, which is in violation of the *rex rei sitæ*, is wholly void as to all persons and for every purpose, the title to the property remaining in the grantor despite his conveyance, must depend upon the legislative intent to be drawn from the language of the statute itself.

The difficulty seems to be in determining the controlling principle or rule to be applied in the construction of such a law. The only proposition, it has been said, upon which all the authorities agree, is the elementary one that the law should be given such effect as the Legislature intended; but there is an irreconcilable conflict in the cases, which have arisen under prohibitory statutes of various kinds as to the true criterion of the legislative intent. In some cases, it is urged that when there is a mere prohibition without a penalty, the Legislature must have intended that the prohibited act should be void, as otherwise there would be no penalty, and the law would be simply "an expression of legislative opinion, without means for its enforcement." In other cases, it is held that a mere prohibition does not make the prohibited act void. In some cases, the fact that a penalty is specified is regarded as establishing the "severely prohibitory character of the law," and as making the act void. In still another class of cases, the presence of a penalty is taken to mean that the Legislature intended that it should be the sole consequence of the violation of the law. In the case, however, of a purchase of real estate by a corporation, in violation of a prohibitory statute, peculiar conditions are presented, which would seem to establish it as the best rule that, in the absence of a declaration that the conveyance shall be void, or that the title shall remain in the grantor, or of some other provision of a similar nature, the question cannot be collaterally raised by third persons, or by the grantor or those claiming under him.

The case of an illegal purchase of real estate by a corporation is to be distinguished from that class of cases in which it is necessary to hold acts done in violation of law void, because to hold otherwise would render the law nugatory, there being no other way to enforce it. In the case of a prohibited purchase of real estate by a

corporation, it is not necessary to hold the deed void, in order to accomplish the end sought to be attained, namely, to prevent the corporation from carrying on a business in a State, in violation of the settled policy of that State. This end may be reached by a more equitable process. It is not necessary to perpetrate the iniquity of allowing a party to recover or transmit title to property, which he has voluntarily conveyed for a full consideration, without returning that consideration. It is not necessary, by declaring a deed void, to restrict a grantor in his choice of an alienee, that is, in his right of alienation, thereby also creating the absurdity that the title still remains in the alienor, in spite of his own will and contract. And finally, it is not necessary to compel innocent stockholders, though guilty of no wrong or fault, to lose both the property purchased and the price paid. The proper officers of the State, by *quo warranto*, or other appropriate process, may proceed against the offending corporation to oust it from the exercise of its franchises in the State, and to have a receiver appointed to sell the lands improperly held by it, applying the proceeds for the benefit of stockholders and creditors. The cases seem to establish the authority for such procedure.[1]

In construing a prohibitory statute or in applying a rule of policy in any one of the cases cited, the Courts should, if possible, protect and preserve the rights of innocent stockholders. Each stockholder of a business corporation contributes his share of the capital for the common benefit of all, and the corporation itself holds the corporate property as a trustee for the shareholders.[2] The corporate entity, therefore, being regarded as the trustee of the stockholders, it would seem that a disability on the part of the corporation to take should not destroy the rights of the beneficial owners, assuming always of course that the law itself does not explicitly so declare. Thus, where the officers of a savings-bank invest its funds in a manner forbidden by statute, such illegal action of the officers does not impair the validity of the investment; and the remedy, either of the trustee or of the *cestuis que trust*, in availing themselves of the security so improperly taken, is not affected.[3] This principle was applied in Insurance Company *v.*

[1] Havemeyer *v.* Superior Court, 84 Cal. 327; s. c. 18 Amer. St. Reports, 192, 211; Wright *v.* Lee, So. Dakota, 51 N. W. Rep. 706; 55 Id. 931; State *v.* Fidelity Co., 39 Minn. 538; State *v.* Insurance Co., 47 Ohio-State, 167.

[2] Morawetz on Corporations, sects. 237, 1032; Ch. J. Doe, on the Dartmouth College Case, 6 Harvard Law Review, p. 172; Taylor *v.* Miami Co., 5 Ohio, 162.

[3] Holden *v.* Upton, 134 Mass. 177; Great Eastern R. R. *v.* Turner, L. R. 8 Ch. 149.

Harbor Protection Company,[1] a case in which certain corporations had attempted to form a corporation under the general laws, without right, and the supposed new corporation had acquired property. It was held that this property belonged to the holders of certificates of stock, and that the Court would order it to be sold and the proceeds divided among them.

The question under discussion has been decided by a Court of last resort, contrary to the doctrine contended for, in but one case, so far as the writer is informed. In a case decided some years ago in Illinois,[2] it is held that a conveyance of land to a foreign corporation, not expressly prohibited by statute, but opposed to the settled policy of the State in which the land is situated, is void; that the corporation takes no title, and is unable to transmit any. In this case, a Connecticut land company had purchased real estate in Illinois, which it subsequently sold and conveyed to the city of St. Louis. The plaintiff, who claimed under the grantor of the land company, brought a suit of ejectment against the city. The Court, by reference to the general course of legislation on the subject, declared it to be against the policy of Illinois to permit a corporation of another State, formed for the sole purpose of buying and selling real estate, to purchase and hold lands in Illinois. The result stated was put on the ground that a corporation created in one State cannot exercise its functions in another State, without the permission of the latter, it being assumed, without reasoning, that a deed to a corporation acting without such consent is necessarily inoperative. Two of the judges, however, dissented from the opinion so far as it held invalid a transfer of land by the corporation to a purchaser.

The cases the other way may be briefly referred to. In a Louisiana case,[3] a corporation had made an *ultra vires* purchase of certain machinery, which was subsequently seized on execution by a creditor of the vendor. The Court said: "If the Company did anything contrary to law, the result might be a forfeiture of its charter. But we do not understand the law to be that if a corporation acquires property in a manner even *prohibited by law*, the property thus acquired still belongs to the vendor who has received his price, and that it can be seized to pay his debts."

In the recent case of Carlow *v.* Aultman,[4] the defendant corporation purchased land in Nebraska, in violation of a statute

[1] 37 Louisiana Annual Reports, 233.
[2] Carroll *v.* East St. Louis, 67 Ill. 568.
[3] Edwards *v.* Fairbanks, 27 La. Ann. 449.
[4] Nebraska (1890), 44 N. W. Rep. 873.

providing that "no corporation or association not incorporated under the laws of this State shall acquire or own, hold or possess by right, title, or descent accruing hereafter, any real estate in the State of Nebraska." The Court held, nevertheless, that the title vested in the corporation, and that it could be questioned by the State alone.

Another late decision to the same effect is Fisk *v.* Patton, Utah Supreme Court, 1891.[1] The statute of Utah under consideration in this case provides that "a corporation shall not have power to enter into, as a business, the buying and selling of real estate."

The Court say: "It will be observed that this statute, while it denies to a corporation the power to engage in buying and selling real estate as a business, affixes no penalty, by forfeiture or otherwise, for its violation. The buying and selling of real estate by a corporation is not a crime under this statute, nor is the business an immoral one, and while a stockholder might by proper proceedings prevent a corporation from engaging or continuing in the business of buying and selling real estate, we do not think that the corporation forfeits its title to real estate bought in violation of the statute."[2]

And in the latest case on the subject, the New York Court of Appeals held that the question whether it is contrary to the policy of that State to permit a foreign corporation to take, hold, or convey land in the State is between the corporation and the government, and is not open to others.[3]

In conclusion, it may be well to note that the case of a devise to a corporation, under any of the conditions stated, is, when the heir of the devisor is the party complaining, distinguishable from the case of a conveyance. Here the rule contended for does not apply, because the will under which the devise is made does not take effect until the testator's death, and then, if his property is not legally devised, no title rests for a single moment in the devisee, but it vests instantly in the heir-at-law or next of kin, who accordingly have a standing in Court to raise the question of the capacity of the corporation to take.[4]

Arthur M. Alger.

TAUNTON, MASS.

[1] 36 Amer. & Eng. Corp. Cases, 669.

[2] See also Gilbert *v.* Hole, So. Dakota (1891), 36 Amer. & Eng. Corp. Cases, 664.

[3] Lancaster *v.* Amsterdam Improvement Co., 140 N. Y. 576, 586.

[4] *In re* McGraw's Estate, 111 N. Y. 66; Trustees of Davidson College *v.* Chambers's Executors, 3 Jones Equity (N. C.) 253; Wood *v.* Hammond, 16 R. I. 98.